

**Before the
Federal Communication Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition For Declaratory Ruling That)	WC Docket No. 02-361
AT&T's Phone-to-Phone IP Telephony)	DA 02-3814
Services Are Exempt From Access Charges)	

**Reply Comments Of:
Fred Williamson and Associates, Inc. ("FW&A")
On behalf of:**

**Chouteau Telephone Company, an Oklahoma ILEC
H&B Telephone Communications, Inc., a Kansas ILEC
Moundridge Telephone Company, Inc., a Kansas ILEC
Pine Telephone Company, Inc., an Oklahoma ILEC
Pioneer Telephone Association, Inc., a Kansas ILEC
Totah Telephone Company, Inc., a Kansas and Oklahoma ILEC
Twin Valley Telephone, Inc., a Kansas ILEC**

Summary Of Reply Comments

The comments of those that support adoption of AT&T's petition¹ offer only rhetoric to support their position. The commenters provide no legal, economic or practical basis for the Commission to grant the petition. These commenters assert wrongly that the Commission's policy is to apply the Enhanced Service Provider (ESP) or Internet Service Provider (ISP) exemption to any traffic that uses IP protocol and public or private Internet facilities to transport phone-to-phone telecommunications calls. Further, these commenters claim, again wrongly, that the phone-to-phone telecommunications calls are enhanced and thus fall under the exemption simply because of the transmission medium utilized (IP protocol).

The facts demonstrate - at odds with the assertions of AT&T and its supporters that phone-to-phone VOIP traffic is, on an end-to-end basis, interstate or intrastate toll voice telecommunications traffic - not enhanced service traffic. Further, a cursory analysis of the facts demonstrate that the ESP or ISP exemption does not apply to this traffic because (1) The traffic is not enhanced; and (2) The long distance provider is not acting as an ISP to allow the customer access to all of the sites and services on the Internet. It is simply using IP facilities (public or private) to transport voice telecommunications traffic, originated and terminated using Local Exchange Carrier (LEC) facilities.

AT&T's petition is a straightforward case of uneconomic bypass using traffic misreporting and misrouting (by AT&T) in order to attempt to pay a lower local business rate or local reciprocal compensation rather than access for the use of ILEC Public Switched Telecommunications Network (PSTN) facilities to terminate AT&T's

interexchange interstate or intrastate toll traffic. Although its actions are at odds with principles and rules established by the Commission, AT&T and its supporters have manufactured numerous faulty and irrelevant claims and assertions to justify the actions that led to its petition. However, none of these claims, assertions or arguments support adoption of the AT&T petition by the Commission and therefore the petition must be rejected. The Commission must, however, take a number of counter actions because of the actions by AT&T that resulted in the petition. First, the Commission must set an example for the States, as AT&T requests, by immediately acting to enforce its own rules and its approved access tariffs to require that AT&T pay access charges for all interexchange telecommunications traffic, including phone-to-phone traffic transported over IP facilities. It must also require that interexchange phone-to-phone telecommunications traffic, whether transported over the public switched network or over the IP facilities, be routed for transport and termination over access facilities, not local exchange facilities. It should not sympathize with every attempt to avoid and arbitrage its own tariffs, as AT&T proposes, but should clearly and unequivocally order that these unethical and likely fraudulent practices will no longer be tolerated. Second, the Commission should investigate AT&T's admission that it purposefully and illegally is passing off interstate and intrastate interexchange calling as local traffic in order to pay a lower rate (either the rate for a local business line or local reciprocal compensation) than would lawfully be applicable to the traffic. Because it has been caught in a blatant attempt to masquerade interexchange traffic as local traffic, AT&T blames the ILECs that caught them at this illegal and fraudulent practice and is attempting through its petition,

¹ Big Planet, Ephone, ICG and Vonage (Big Planet et al); Level 3; Net2Phone; Time Warner; WorldCom; VON Coalition.

after the fact, to obtain Commission approval of a practice that is clearly at odds with the Commission's rules. Finally, the Commission should consider requiring computer-to-phone providers who self-report be charged a \$25 per month surcharge per line for the use of the ILECs' network to transport and terminate their incidental traffic. Should this traffic become significant in volume, the Commission could revisit its decision.

The Facts Do Not Support AT&T's Petition And It Must Be Dismissed By The Commission

The facts regarding Voice Over Internet Protocol (VoIP) traffic are straightforward and tell a different story than the rhetoric and assertions presented by the commenters supporting AT&T's petition.

Fact 1 – Voice traffic is simply transported using IP protocol. VoIP is simply a different means of transporting voice long distance traffic. Phone-to-phone VoIP most often uses privately owned facilities constructed by long distances providers such as AT&T. VoIP may also be provided using IP protocol over the public Internet.

Fact 2 – The means of transport does not transform voice telecommunications traffic to enhanced or information service traffic. The use of packetized IP transport (whether over private or public Internet facilities) or circuit switched analog or digital transport does not change or alter the voice traffic. These transport facilities simply move the voice telecommunications traffic from one place to another using different technologies (packet, analog or digital transport). Transport is transport - IP or circuit switched facilities may be selected by the long distance carrier based on its economics and

business case to carry its voice telecommunications traffic. The selection of one mode of transport over another does not change or transform voice telecommunications into another service such as an enhanced service.

Fact 3 – The ESP or ISP exemption does not apply to voice telecommunications traffic and Voice long distance providers are not ESPs or ISPs.

The exemption was put into place to assist the emerging ESPs in the provision of enhanced - not voice - services. The exemption was later extended to ISPs to facilitate dial-up connection of customers to the Internet for access to the multitude of sites and services on the Internet. The exemption does not apply to long distance voice telecommunications traffic or providers of that traffic, such as AT&T, that are not providing enhanced services or allowing customers to access Internet sites and services, but simply use private or public IP protocol facilities as a means of transport.

Fact 4 – Originating, transport and terminating facilities provided by Incumbent or Competitive Local Exchange Carriers (ILECs or CLECs) are an essential component of long distance service, whatever the means of transport. None of AT&T's phone-to-phone voice services (whether transported via circuit switched or IP) could work without the facilities that interconnect the IP or circuit switched transport facilities of the long distance carrier to the originating or terminating customer.

Fact 5 – The principles and rules established by the Commission in the access charge docket (CC Docket No. 78-72) compel the Commission to apply legally tariffed access charges to all long distance traffic, irrespective of the means of transport selected by the long distance provider. In order to promote fair and economic competition among long distance providers, the Commission in CC Docket No. 78-72 established principles and

rules that insured that all providers of interstate long distance voice telecommunications services (MTS, WATS, etc.) would, through the application of access charges, pay the same amount for the use of originating and terminating network facilities. The Commission required AT&T (then the dominate long distance provider) to impute access charges to its services and, subsequent to divestiture, to pay access charges to the LECs for the use of their originating, transport and terminating facilities. The Commission also required new competitive long distance providers (MCI, SPCC or later Sprint, etc.) to discontinue the use of local business lines that they were using to originate and terminate their traffic and to pay access charges (discounted initially and full access subsequent to implementation of equal access). The Commission also sought to insure that providers of private switching facilities (Private Branch Exchanges or PBXs) that could place or “leak” long distance traffic onto the telecommunications network, also paid access for the use of LEC facilities to originate, transport or terminate voice traffic through the application of a \$25.00 surcharge. This surcharge for PBXs was utilized in place of usage sensitive access charges because this “leaked” traffic was viewed as incidental and was difficult to identify and measure. The only exception to this regime was a “temporary” exemption that the Commission provided to providers of enhanced services or ESPs for the use of the network to originate and terminate enhanced services and later to ISPs to allow customers to connect and access Internet sites and services.

The principles and objectives that served as the basis for the comprehensive access charge regime adopted by the Commission were to:

a) Facilitate economic competition by insuring that all long distance providers and their services paid equivalent amounts for the use of LEC facilities to originate, transport or terminate their long distance voice telecommunications calls.

b) Avoid uneconomic bypass. No long distance provider of voice telecommunications services was allowed to gain a competitive advantage by obtaining facilities to originate or terminate their services at rates less than access charges (for instance, through the use of local business line rate levels).

c) Promote and maintain universal service by insuring that LECs are fairly compensated for the use of their facilities to originate, transport and terminate long distance provider voice telecommunications calls.

These principles and the resulting access charge rules are still applicable to all voice telecommunications traffic, including VoIP, irrespective of the means of transport selected by the long distance provider.

The Rhetoric And Assertions Of Commenters Supporting AT&T's Petition Provide No Legal Or Economic Basis To Grant The Petition

As is typically the case when their position is unsupported by the facts, the commenters supporting the AT&T petition resort to incorrect assertions, misstatements and rhetoric designed to elicit sympathy for their position and to obscure the facts. For instance, they state that:

1. Granting the petition will eliminate regulatory uncertainty.²

² Comments of Big Planet et al, pages 2, 11; Level 3, page 3; Time Warner, pages 1, 2, 3; WorldCom, page 5.

This is simply not true. Any regulatory uncertainty has been caused by the VoIP providers that are seeking to supply themselves with an anti-competitive advantage vis-à-vis other long distance providers through uneconomic bypass and inappropriate arbitrage of the access charge rules. If the Commission should grant the petition, regulatory uncertainty will be promoted because the Commission will create uneconomic bypass and arbitrage and will deprive the LECs of their legal opportunity to recover the costs used by VoIP providers to originate, transport and terminate the provider's calls.

2. Charging access will deter deployment of new facilities and services while granting the petition will lead to additional investment.³

This is economically incorrect and is a blatant attempt at economic blackmail. Long distance service is essentially a non-regulated service and long distance providers should not expect or receive incentives in the form of discounted rates or bill-and-keep to invest in transport facilities, whether circuit switched or IP.⁴ These decisions should be based on economically sound business decisions and if the assertions of Level 3 are correct, rapidly decreasing costs of IP technology⁵ should provide all the investment incentives that are required.

³ Comments of Big Planet et al, page 2; Level 3, page 5; Time Warner, page 2; WorldCom, page 1.

⁴ Big Planet et al, asserts on page 3 of its comments that the Commission should issue "...a declaratory ruling that clarifies the FCC's commitment to the unregulated status of VoIP services as a nascent, developing industry exempt from a burdensome access charge regime...". In fact, long distance services voice telecommunications services are now largely unregulated. However, that status does not absolve providers of those services from paying access charges for the use of LEC facilities, based on legally filed and approved tariffs, for the use of their facilities to originate and terminate the long distance provider's voice calls. Further, there is no nascent and developing industry. All that is occurring is that long distance providers are transitioning, where economically feasible, to a different means of transport (IP technology) for their voice telecommunications traffic.

⁵ Comments of Level 3, page 6

Commission intervention as requested by AT&T and its supporters would in fact have the consequence of deterring ILEC or CLEC investment in originating and terminating access facilities. If ILECs or CLECs are not compensated for the use of these facilities because of Commission-promoted VoIP phone-to-phone arbitrage of access charge rates, ILECs or CLECs will have little incentive to invest or to upgrade their facilities.

3. IP technology does not fit the legacy definitions and “regulatory fictions” applicable to circuit switched technology.⁶

This is not correct. IP technology is simply used by long distance providers to transport their phone-to-phone calls. IP transport, like circuit switched transport, relies on and cannot function without ILEC or CLEC originating and terminating access facilities to complete their calls. The PSTN is being used by AT&T for its VoIP long distance calling exactly like it is being used by AT&T and other interexchange carriers when circuit switched transport is utilized by those carriers. Phone-to-phone VoIP long distance calling functionally operates in exactly the same manner as circuit switched calling. The only difference is the transport medium utilized. The existing (not legacy) access service tariffs are legally applicable to all phone-to-phone long distance telecommunications traffic whether transported via circuit switched, VoIP, or some other new technology.

4. Access charges are above cost, economically inefficient and non-cost based.⁷

⁶ Comments of Big Planet et al, page 5; Level 3, pages 4, 6; Worldcom, page 7; VON Coalition, page 1.

⁷ Comments of Big Planet et al, pages 2, 12, 16; Level 3, pages 3, 6, 10, 20; WorldCom, pages 4, 6; VON Coalition, page 9.

There is no legal or ethical basis for AT&T and its supporters to attempt to justify their claims and/or actions - the attempt to avoid the imposition of legitimately and properly approved tariffed access rates for the use of ILEC facilities - by claiming that access charges are above cost, inflated, etc. If this was ever the case, the Commission's recent actions to reduce these charges for price cap and non-price cap ILECs should lay this tired argument to rest. The current nationwide average access rate is approximately one-half of a cent. Pooling ILEC access charges are clearly based on costs as justified to and approved by the Commission on a routine basis.

5. Application of access charges to phone-to-phone VoIP long distance telecommunications is discriminatory.⁸

Commenters supporting AT&T assert that LECs will not be able to apply access charges on a non-discriminatory basis because certain long distance providers will be incented to disguise long distance traffic as local or to strip the Calling Party Number (CPN) so that the end-to-end jurisdiction of the call cannot be identified. Consequently, these commenters assert that the Commission should recognize and justify this fraud by eliminating the application of access charges to all phone-to-phone VoIP calling. This logic is a clear example of the decline in business ethics in the United States and must not be supported and promoted by the Commission. These unethical and fraudulent practices are not limited to VoIP long distance calling, but also are used by long distance providers that transport their calls over circuit switched transport.

The Commission should send a clear and unequivocal signal in this proceeding that it will not tolerate fraud of any nature by long distance providers by:

- Enforcing its tariffs that require that all long distance voice telecommunications traffic be delivered over access facilities, not local exchange lines as requested by AT&T.
- Requiring long distance carriers to pass, not strip, the CPN.
- Enforcing the application of access charges to all phone-to-phone long distance calling, irrespective of the transport utilized by the long distance provider.

LECs that seek to stop this fraudulent attempt by long distance providers to avoid lawfully applicable access charges to this traffic through “self help” should be supported by the Commission.

6. Competitive distortions will occur because access charges cannot be applied to other forms of VoIP traffic such as computer-to-phone or computer-to-computer.⁹

This assertion is wrong. For completely separate platforms (computer-to-computer) that do not use LEC facilities to originate or terminate calls, access charges are not applicable. This platform should be allowed to develop and compete, if it can efficiently, with the long distance voice platforms that do use LEC local exchange facilities to originate and terminate calls. This competition between differing platforms (like the competition between satellite, cable and wireline in the broadband market) is not a competitive distortion, but appropriate economic competition. For long distance providers that, in part, use LEC local exchange facilities to terminate their long distance telecommunications traffic (computer-to-phone), competitive distortions might occur unless the Commission insures that these providers also pay an appropriate amount for

⁸ Comments of Big Planet et al, page 24; Level 3, page 18; Time Warner, pages 3, 5; WorldCom, page 9.

⁹ Comments of Level 3, page 19

the use of LEC facilities to terminate their calls. These providers are likely now inappropriately delivering their long distance telecommunications traffic for termination as local traffic via arrangements with a CLEC or ILEC. The Commission should require that this traffic be delivered via access charge facilities, not local exchange lines and that access charge rates be applied. However, assuming that computer-to-phone interexchange telecommunications calling, unlike phone-to-phone interexchange calling, is incidental, computer-to-phone providers who self-report could be charged a \$25 per month surcharge for the use of the ILEC's network to transport and terminate their incidental traffic. Should this traffic become significant in volume, the Commission could revisit its decision.

7. VoIP providers will be required to deploy costly and duplicate facilities if phone-to-phone long distance traffic is treated as access traffic.¹⁰

Commenters supporting AT&T assert that if traffic must be segregated for compensation purposes, separate routing will be required leading to costly network inefficiencies. They also assert that they might be required to analyze each call and/or packet to determine its jurisdiction. These assertions are incorrect. VoIP carriers have had to deploy facilities now that will properly route local and long distance calls. All that is required is that these providers properly include the CPN and route their voice long distance telecommunications for termination over existing access facilities rather than local business lines.¹¹ No duplicate facilities and analysis of calls or packets are required.

¹⁰ Comments of Big Planet et al, pages 18, 19; Level 3, pages 14 to 18

¹¹ Big Planet et al asserts on page 19 of its comments that there are privacy issues involved in passing the CPN, that the VoIP provider would need to ascertain the origination, destination and nature of each packet and that any anonymity and expectation of privacy would be lost. This assertion is a red herring designed

8. A VoIP network is a multifunction network and some of the services can be enhanced.¹²

The implication is that if certain services deployed over IP technology are enhanced, then all services, including voice, are enhanced. This is incorrect. Phone-to-phone voice telecommunications enters the IP transport network from LEC access facilities as voice and exits this network as voice to be terminated on LEC access facilities. The provider of long distance service may co-mingle voice and enhanced packets on its IP network facilities, but these packets are ultimately segregated when the non-enhanced voice traffic leaves the IP transport network.

9. VoIP is a nascent and emerging technology and application of the ESP or ISP exemption will benefit consumers and allow the emerging VoIP technology to grow and thrive.¹³ Application of access charges will stunt growth and stifle innovation and thus deprive consumers of the benefits of this emerging technology and harm consumer welfare.¹⁴

These statements are incorrect and simply an attempt to obtain an anti-consumer and anti-competitive benefit for providers of phone-to-phone long distance voice telecommunications that uses IP technology for transport. As discussed previously in these comments, the ESP or ISP exemption is not applicable to long distance voice

to elicit sympathy for the fraudulent practice of stripping the CPN so that the long distance provider can avoid legitimate charges. Long distance providers have passed the CPN for years with no concerns regarding the privacy of the originating caller. Further, for phone-to-phone IP voice calling, the VoIP provider does not, as Big Planet asserts, have any need to analyze packets. All that is required is to pass the CPN and route the voice telecommunication traffic for termination over access facilities.

¹² Comments of Big Planet et al, page 20; Level 3, page 13; VON Coalition, page 9.

¹³ Comments of Big Planet et al, page 2; Level 3, page 12; WorldCom, page 5.

telecommunications providers simply because they are using a different method to transport their calls. Further, “emerging” technologies will thrive and grow if they are economically efficient as an alternative to current transport technologies. If IP technology is an efficient and cost effective means to transport voice calls, long distance providers will be incented to use this technology because it will lower their costs of transport and provide a more efficient operation. The application of access charges for the use of LEC networks to originate or terminate long distance calls (whatever the means of transport – VoIP or circuit switched) should not have any affect on consumers and will certainly not deprive consumers or harm consumer welfare, assuming that the use of IP transport is more efficient than the current circuit switched transport.¹⁵

Bill-and-keep and application of the exemption will, however, provide an unneeded and anti-competitive subsidy to providers of phone-to-phone VoIP long distance voice telecommunications. Local exchange consumers will be harmed by this action because it is those consumers that will pay for the costs of the free use of the LEC network by the VoIP long distance providers¹⁶ and thus subsidize their competitive service. By

¹⁴ Comments of Big Planet et al, page 16, WorldCom, page 8; VON Coalition, page 9, 10.

¹⁵ In a complete misstatement of economic of interconnection and VoIP transport, Level 3 also asserts that “...VoIP and circuit switching have different underlying cost structures. Permitting local exchange carriers to impose access charges for the termination of VoIP ‘calls’ would be based on the higher-cost network’s costs and discourages service providers using the less efficient technology from transitioning to the more cost-effective technology.” This statement is nonsense. In reality, access charges recover the costs of the LEC facilities used to originate and terminate the long distance service provider’s calls, irrespective of the transport facilities (VoIP or circuit switched) selected by the service provider. As a consequence, the access charges have no economic bearing on the service providers to select one type of transport technology over another.

¹⁶ Level 3 at page 20 of its comments characterizes this increased cost to consumers and subsidy to the competitive VoIP providers as “...end-users pay for the benefit of making and receiving calls.” The VON Coalition wrongly asserts on page 10 of its comments that end-user charges adequately compensate the ILEC for the use of its facilities and that access charges associated with circuit switched costs are not appropriate for VoIP traffic. The VON Coalition is either purposefully trying to obscure the facts or it really does not understand the purpose of the access charge rate elements. Interstate end user charges simply recover the loop portion of the network costs and do not compensate the ILEC for the traffic sensitive facilities used by voice IP telecommunications services. The remaining traffic sensitive costs as

attempting to pay lower and often below cost local service or reciprocal compensation rates rather than access rates, AT&T itself is seeking a subsidy for its competitive interexchange toll service that is transported over IP protocol facilities. At odds with section 254(k) of the Act, that subsidy would flow from local exchange customers to AT&T's competitive toll service. For this reason alone, the Act requires that AT&T's petition be dismissed by the Commission.

Conclusion

The commenters supporting AT&T's petition have used all of the buzzwords that have worked in the past to give them an inappropriate and anti-competitive advantage to the detriment of the general body of consumers.

These commenters first appeal to the regulatory predisposition that access charges are somehow inappropriate and bash the access charge regime. With no factual basis and solely in an attempt to obtain either a discounted rate or free use of LEC network facilities, they assert that:

- The access charge regime is irrational.¹⁷
- Their services will have to bear the burden of inefficient and non-cost based access charges.¹⁸
- The current regime is an embarrassment and should be eliminated.¹⁹

reflected by access charges are associated with the circuit switched ILEC network that the VoIP providers use to originate and terminate their traffic and thus are appropriate charges.

¹⁷ WorldCom, page 6. In fact, the current compensation regime is rationale. It requires service providers, whether local or toll, who have charged customers for the completion of end-to-end calls, to pay all underlying network providers whose facilities are used by the service provider to complete the call, to pay

- New technologies do not fit into the legacy access definitions.²⁰

Next, these commenters appeal to an anti-incumbent bias and bash the LECs by incorrectly asserting that:

- LEC actions are causing regulatory uncertainty.²¹
- LEC application of access charges will block VoIP growth, deter deployment of new and emerging technologies and will deprive consumers of these technologies and their benefits.²²
- LEC actions are anti-competitive, discriminatory and result in disparate treatment and competitive distortions.²³
- LECs are attempting to re-monopolize and extend or entrench their monopoly through the use of bottleneck facilities.²⁴
- LECs are creating significant barriers to entry.²⁵

for the use of those facilities. Differing rates exist because of the differing regulatory jurisdictions and the circumstances in those jurisdictions.

¹⁸ Comments of Level 3, page 3; Worldcom, pages 4, 6; VON Coalition, page 9.

¹⁹ Comments of WorldCom, page 7.

²⁰ Comments of Big Planet et al, pages 2, 11; Level 3, page 4; WorldCom, pages 7, 8; VON Coalition, page 1.

²¹ Comments of Big Planet et al, pages 2, 16; Level 3, page 3; WorldCom, page 5.

²² Comments of Big Planet et al, pages 2, 14; Level 3, page 4; WorldCom, pages 1, 8; VON Coalition, page 9, 10.

²³ Comments of Level 3, page 19; Net2Phone, page 1; WorldCom, page 9.

²⁴ Comments of WorldCom, pages 8, 9, 10 and Net2Phone, page 1. This is an overused and tired MCI (and now WorldCom) assertion that is incorrect. LEC facilities are not a bottleneck, but the means that long distance providers, including VoIP providers, use to originate and terminate their customer's calls. Likewise, LECs, including CLECs are not re-monopolizing anything, but provide the necessary facilities to reach all customers. The access rates charged by ILECs and CLECs for the use of these facilities through legal tariffs have been constrained to very reasonable levels by the various regulatory bodies that oversee those tariffs.

²⁵ Comments of Big Planet et al, page 15. Paying legally tariffed access charges for the use of another carrier's facilities is no barrier to entry of a long distance provider as the huge number of these providers now in business demonstrates.

Next, the commenters appeal to the political fear that consumer privacy and the Internet will be harmed by knowingly and wrongly asserting that:

- Applying access charges requires information that raises customer privacy concerns.²⁶
- The Internet, including VoIP services, should not be regulated.²⁷
- Access charges are tantamount to a tax on the Internet.²⁸

Finally, the commenters appeal to the bias in favor of new technologies and competition. They attempt to obscure their real aim, which is to obtain an anti-competitive advantage, with rhetoric about new technology, investment, innovation, etc:

- Access charges would stunt growth and stifle the most efficient technologies and innovation. Deregulation facilitates growth and innovation.²⁹
- Access charges will prevent true economic efficiencies and deprive consumers of the full range of product innovation. Carriers deploying advanced technologies should reap the cost benefits of those technologies.³⁰

²⁶ Comments of Big Planet et al, page 2. See footnote 11 of these reply comments for further explanation.

²⁷ Comments of Big Planet et al, page 2. Imposition of access charges for the use of circuit switched LEC facilities is clearly not an attempt by the FCC to regulate the Internet. Further, VoIP services are not the Internet, as Big Planet implies, but simply a use of IP technology to transport voice telecommunications traffic.

²⁸ Comments of WorldCom, page 4. At odds with WorldCom's assertion, application of access charges for the use of LEC facilities to originate and terminate a VoIP provider's long distance voice calls has nothing to do with the Internet but is simply a charge to recover the LEC's costs.

²⁹ Comments of Big Planet et al, pages 16, 17; Level 3, page 4; WorldCom, page 4; VON Coalition, page 9. In fact, this petition is not about the deregulation of long distance services, including VoIP, that are now largely deregulated, but about paying for the use of another carrier's facilities that are used by Big Planet and other VoIP providers to originate and terminate their voice calls.

³⁰ Comments of Level 3, page 4. Access charges in reality have nothing to do with the economic incentive to replace existing transport and deploy more efficient transport by a long distance provider. Nothing prevents the long distance provider from deploying those technologies and reaping the cost benefits either by lowering the prices to its voice telecommunications customers or by maintaining its rates and flowing the cost savings to its bottom line. What these providers really want is to deprive LECs, who also deploy new and advanced technologies, from recovering their costs by avoiding paying access charges.

- VoIP is a nacent and emerging, efficient and reliable service that must be protected in order to grow and thrive.³¹
- The Commission should establish a pro-competitive, deregulatory policy and establish that VoIP enhanced services are not regulated as telecommunications services.³²

The Commission must ignore all of these appeals of fear and bias that are without basis and simply wrong. As the New York State Department of Public Service states on page 3 of its comments: “The AT&T Petition suggests that the use of Internet Protocol, or routing a call over ‘the Internet,’ or perhaps simply associating the word ‘Internet’ with a service somehow takes it out of the realm of telecommunications and into a special world protected from regulation.” The simple fact is that phone-to-phone VoIP services are voice long distance telecommunications to which access charges apply, just as they apply to all other voice long distance traffic. The LECs have a right, under their legally approved tariffs, on a non-discriminatory basis, to assess access charges in order to recover their costs, on all voice long distance telecommunications traffic, whether it is transported on a circuit switched or an IP basis by the long distance service provider.³³

³¹ Comments of Level 3, pages 11, 12; VON Coalition, page 2, 10. The use of IP to transport voice telecommunications may be relatively new, but the service transported is neither nacent nor emerging – it is plain old long distance voice telecommunications. The VOIP providers are simply asking for a subsidy (an exemption from access charges) for a well-established competitive service that will be paid for by local exchange customers. Level 3 states on page 20 that end users should pay for this subsidy. This subsidy is clearly at odds with Section 254(k) of the Communications Act.

³² Comments of Level 3, pages 1, 2; VON Coalition, page 3, 7. First, VoIP long distance VoIP services are largely unregulated now. Second, VoIP services are not, under any definition, enhanced services, but are voice telecommunications.

³³ LECs are not required to seek permission to apply these charges with respect to phone-to-phone VON service as asserted by the VON Coalition at page 11 of their comments.

The VoIP providers are simply asking for a subsidy (an exemption from access charges) for a well-established competitive service (long distance) using a new transport medium (IP) that will be paid for by local exchange customers. Level 3 states on page 20 that end users should pay for this subsidy. This subsidy is clearly at odds with Section 254(k) of the Communications Act.

The Commission must reject AT&T's petition.

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